

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

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In re Patent Application of:  
Robert J. Devins, Esq. et al.

Confirmation No.: 5629

Application No.: 10/665,289

Filed: September 22, 2003

Art Unit: 2628

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For: METHOD AND SYSTEM FOR GRAPHICS  
RENDERING USING HARDWARE-EVENT-  
TRIGGERED EXECUTION OF CAPTURED  
GRAPHICS HARDWARE INSTRUCTIONS

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Examiner: HSU, Joni

**PETITION TO WITHDRAW HOLDING OF ABANDONMENT UNDER 37 CFR 1.181(a)**

**MS ISSUE FEE**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

Petitioner hereby petitions the Commissioner to withdraw the holding of abandonment in the Notice of Abandonment mailed on October 3, 2006 due to USPTO error. The Notification incorrectly stated that the Applicant failed to timely pay the required issue fee and publication fee within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).

**Relevant Facts**

To the undersigned's knowledge and belief, and after making reasonable inquiry into the circumstances surrounding this application, a statement of the relevant facts with respect to this petition is provided below:

(1) This petition has been timely filed within two (2) months from the mailing date of the Notice of Abandonment, as required by 37 CFR 1.181(f).

(2) The enclosed Notice of Abandonment was mailed on October 3, 2006, and was received by the undersigned attorney shortly thereafter.

(3) The Notice of Abandonment indicated that the submitted fee of \$0 was insufficient, and that the Issue and Publication Fees had not been received.

(4) Enclosed is a true copy of an executed Form PTOL-85 which was hand-delivered to the U.S. Patent & Trademark Office (“USPTO”) on June 20, 2006. The enclosed copy bears a stamp dated June 20, 2006 showing receipt by the OIPE in the USPTO.

(5) The above Transmittal referenced Deposit Account No. 09-0456 for fees related to this application, including the large entity Publication and Issue Fees of \$1400.

(6) The date stamp by the USPTO OIPE on the copy of the PTOL-85 shows timely receipt by the USPTO on June 20, 2006, well before the Issue and Publication Fee due date of August 31, 2006.

(7) IBM Deposit Account No. 09-0456 was not charged by the USPTO on June 20, 2006 for the Issue and Publication Fees due for this application, apparently because box 4b on the PTOL-85 was inadvertently not checked, even though the deposit account information was filled in.

(8) The attached “Notice of Fee Due” dated 06/21/06 (apparently an internal USPTO document) was downloaded from the USPTO PAIR site after receipt of the Notice of Abandonment. This Notice indicates that “If an authorization is present, please charge the appropriate fee...[i]f an authorization is not present, ***notify the application [sic] of the fee deficiency.***” (emphasis added).

(9) Applicants were not notified of the asserted fee deficiency. Lack of further action by the USPTO to notify Applicants of the asserted fee deficiency and apparent lack of deposit account authorization is submitted as being USPTO error, and if not deemed to be USPTO error, such deficiency on the part of the USPTO at least does not represent efficient and timely processing and customer service, particularly in light of the clearly expressed intent by Applicants to pay the Issue and Publication fees for this application by submission of the executed PTOL-85 on a date that was well before the due date.

**Relief Sought by Applicant**

Applicant respectfully requests the following relief:

- (A) That the holding of abandonment be withdrawn due to USPTO error as if no abandonment had occurred;
- (B) That IBM Deposit Account No. 09-0456 be charged \$1400 for the Publication and Issue Fees that were due on August 31, 2006 in this application, if the holding of abandonment is withdrawn; and
- (C) That this application be processed for immediate issue by the Publication Branch.

**No Fees are Believed to Be Due**

Although no Petition fees are believed to be due in this matter because of USPTO error, if any fees are due, the Director is hereby authorized to charge any deficiency in the fees filed, asserted to be filed or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to CBLH Deposit Account No. 22-0185, under Order No. 21806-00056-US1, from which the undersigned is authorized to draw.

Date: October 11, 2006

Respectfully submitted,

By /Larry J. Hume/

Larry J. Hume

Registration No.: 44,163

CONNOLLY BOVE LODGE & HUTZ LLP

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(202) 331-7111

(202) 293-6229 (Fax)

Attorney for Applicant

Enclosure: Notice of Abandonment mailed 10/03/06  
Part B - Fee(s) Transmittal (PTOL-85) with date-stamp of 06/20/06  
"Notice of Fee Due" dated 06/21/06 (internal USPTO document from PAIR)



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/665,289	09/22/2003	Robert J. Devins	21806-00056-US1	5629
42221	7590	10/03/2006	EXAMINER	
CONNOLLY BOVE LODGE & HUTZ LLP IBM MICROELECTRONICS DIVISION 1990 M STREET NW, SUITE 800 WASHINGTON, DC 20036-3425			HSU, JONI	
			ART UNIT	PAPER NUMBER
			2628	

DATE MAILED: 10/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Notice of Abandonment

Application No.

10/665,289

Examiner

HSU

Applicant(s)

DEVINS

Art Unit

2628

**- The MAILING DATE of this communication appears on the cover sheet with the correspondence address-**

This application is abandoned in view of:

1. ☐ Applicant's failure to timely file a proper reply to the Office letter mailed on \_\_\_\_\_.
  - (a) ☐ A reply was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply (including a total extension of time of \_\_\_\_\_ month(s)) which expired on \_\_\_\_\_.
  - (b) ☐ A proposed reply was received on \_\_\_\_\_, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.  
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
  - (c) ☐ A reply was received on \_\_\_\_\_ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
  - (d) ☐ No reply has been received.
2. ☒ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
  - (a) ☐ The issue fee and publication fee, if applicable, was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
  - (b) ☒ The submitted fee of \$0 is insufficient. A balance of \$1700 is due.  
The issue fee required by 37 CFR 1.18 is \$1400. The publication fee, if required by 37 CFR 1.18(d), is \$300.
  - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
  - (a) ☐ Proposed corrected drawings were received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply.
  - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on \_\_\_\_\_ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☐ The reason(s) below:

lgd

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

## PART B - FEE(S) TRANSMITTAL

Complete and send this form, together with applicable fee(s), to: **Mail** Mail Stop ISSUE FEE  
 Commissioner for Patents  
 P.O. Box 1450  
 Alexandria, Virginia 22313-1450  
 or **Fax** (571)-273-2885

INSTRUCTIONS: This form should be used for transmitting the ISSUE FEE and PUBLICATION FEE (if required). Blocks 1 through 5 should be completed where appropriate. All further correspondence including the Patent, advance orders and notification of maintenance fees will be mailed to the current correspondence address as indicated unless corrected below or directed otherwise in Block 1, by (a) specifying a new correspondence address; and/or (b) indicating a separate "FEE ADDRESS" for maintenance fee notifications.

CURRENT CORRESPONDENCE ADDRESS (Note: Use Block 1 for any change of address)

42221 7590 05/31/2006

CONNOLLY BOVE LODGE & HUTZ LLP  
 IBM MICROELECTRONICS DIVISION  
 1990 M STREET NW, SUITE 800  
 WASHINGTON, DC 20036-3425



Note: A certificate of mailing can only be used for domestic mailings of the Fee(s) Transmittal. This certificate cannot be used for any other accompanying papers. Each additional paper, such as an assignment or formal drawing, must have its own certificate of mailing or transmission.

## Certificate of Mailing or Transmission

I hereby certify that this Fee(s) Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Mail Stop ISSUE FEE address above, or being facsimile transmitted to the USPTO (571) 273-2885, on the date indicated below.

(Depositor's name)
(Signature)
(Date)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/665,289	09/22/2003	Robert J. Devins	21806-00056-US1	5629

TITLE OF INVENTION: METHOD AND SYSTEM FOR GRAPHICS RENDERING USING HARDWARE-EVENT-TRIGGERED EXECUTION OF CAPTURED GRAPHICS HARDWARE INSTRUCTIONS

APPLN. TYPE	SMALL ENTITY	ISSUE FEE	PUBLICATION FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	NO	\$1400	\$300	\$1700	08/31/2006
EXAMINER	ART UNIT	CLASS-SUBCLASS			
HSU, JONI	2628	345-503000			

1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363).

- ☐ Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached.
- ☒ "Fee Address" indication (or "Fee Address" Indication form PTO/SB/47; Rev 03-02 or more recent) attached. Use of a Customer Number is required.

2. For printing on the patent front page, list

- (1) the names of up to 3 registered patent attorneys or agents OR, alternatively,
- (2) the name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed.

1 Connolly Bove Lodge  
 & Hutz LLP  
 2 Richard M. Kotulak  
 3 Larry J. Hume

3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)

PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. If an assignee is identified below, the document has been filed for recordation as set forth in 37 CFR 3.11. Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE

International Business  
 Machines Corporation

(B) RESIDENCE: (CITY and STATE OR COUNTRY)

Armonk, NY

Please check the appropriate assignee category or categories (will not be printed on the patent): ☐ Individual ☒ Corporation or other private group entity ☐ Government

4a. The following fee(s) are enclosed:

- ☒ Issue Fee
- ☒ Publication Fee (No small entity discount permitted)
- ☐ Advance Order - # of Copies \_\_\_\_\_

4b. Payment of Fee(s):

- ☐ A check in the amount of the fee(s) is enclosed.
- ☐ Payment by credit card. Form PTO-2038 is attached.
- ☒ The Director is hereby authorized by charge the required fee(s), or credit any overpayment, to Deposit Account Number 09-0456 (enclose an extra copy of this form).

5. Change in Entity Status (from status indicated above)

- ☐ a. Applicant claims SMALL ENTITY status. See 37 CFR 1.27. ☐ b. Applicant is no longer claiming SMALL ENTITY status. See 37 CFR 1.27(g)(2).

The Director of the USPTO is requested to apply the Issue Fee and Publication Fee (if any) or to re-apply any previously paid issue fee to the application identified above. NOTE: The Issue Fee and Publication Fee (if required) will not be accepted from anyone other than the applicant; a registered attorney or agent; or the assignee or other party in interest as shown by the records of the United States Patent and Trademark Office.

Authorized Signature Larry J. Hume

Date 6/7/2006

Typed or printed name Larry J. Hume

Registration No. 44,163

This collection of information is required by 37 CFR 1.311. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, Virginia 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

## Notice of Fee Due

Date:

06/21/06

Application Number:

10665289

A fee is due for the attached document for the reason indicated below. Please check the application for the appropriate authorization to charge a deposit account. If an authorization is present, please charge the appropriate fee\*. If an authorization is not present, notify the application of the fee deficiency.

**\*If the fee due is for any of the filing fees, check for authorization to charge the surcharge. If authorization is present, charge the surcharge for late payment of the filing fees as well.**

☐ Insufficient payment by check or money order.

☐ Insufficient funds in deposit account \_\_\_\_\_.

☐ Insufficient payment by credit card.

☐ Declined credit card.

☒ No authorization to charge a deposit account.

Fee code(s) to be applied:

<u>1501</u>	<u>\$ 1400.00</u>
<u>1504</u>	<u>\$ 300.00</u>
_____	_____
_____	_____

Amount in holding fee code:

<u>1622</u>	_____
<u>2622</u>	_____
<u>1999</u>	_____

Total remaining due from applicant:

_____	<u>\$ 1700.00</u>
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RAM Operator

MBEYONEZ